In the High Court of Judicature at Madras

Dated: 29/03/2004

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The Hon'ble Mr. Justice S. ASHOK KUMAR

Criminal Original Petition No. 39985 of 2003

Mohan
No: 47, Shanmugasundaram St.
Muthamilzh Nagar,
Saligrammam,
Chennai 600 093. ... Petitioner

-Vs-

State,
rep. by Inspector of Police,
V-2, Virugambakkam Police Station,
Virugambakkam,
Chennai 600 092. ... Respondent

Petition under Section 482 of Cr.P.C. praying to pass an order of direction in C.C. No: 5725 of 2002 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai an thus to direct him to proceed in accordance with law on the basis of the complaint originally registered under Section 306 of I.P.C.

!For petitioner : M/s.S. Samuel Raja Pandian

^For respondent : Mr.Abudu Kumar Rajarathinam,
Govt. Advocate (Criminalside)

:O R D E R

This is a petition to direct the respondent to proceed against the accused for the alleged offence under Section 306 of I.P.C. in Crime No: 833 of 2002. The brief facts of the case are as follows : On 01.05.2002, the petitioner's daughter by name Saranya studying in 8th standard in a local Government School committed suicide by self immolation for the reasons that she was tortured by the four accused by using abusive language which will have a bearing on her character. On the complaint of the petitioner, a case in Crime No: 833 of 2002 in the respondent police station was registered against four persons by name Meerabi, Kaja, Nahoor and Murali for alleged offences under Section 306 of I.P.C. The case was investigated and the respondent filed a final report for alleged offences only under Section 354 and 5 09 of

I.P.C. against the accused thereby deleting Section 306 of I.P.C. Aggrieved over the same, this petition has been filed to direct the respondent police to file charge sheet for alleged offence under Section 306 of I.P.C.

2. Learned Government Advocate (Criminal side) produced the C.D. file and submits that the Deputy Director, Criminal Prosecution Department, has given an opinion that no case can be filed for an offence under Section 306 of I.P.C. since there is no evidence to show that the accused persons instigated the victim girl to commit suicide. The opinion of the Deputy Director, Criminal Prosecution Department, was perused. He has opined that there is sufficient evidence to show that the accused used filthy language which will have a bearing on the character of the girl who committed suicide and there is sufficient evidence for the said occurrence. But the Deputy Director, has further stated that there is no proof that the accused had instigated the deceased to commit suicide and therefore, he has given his opinion that offence under Section 306 is not made out.

3. The opinion of the Deputy Director, is patently wrong. He has not applied his mind to the facts of the case in a proper manner and has given a one line opinion in favour of the accused to make a serious case triable by a Court of Sessions to be a simple case to be tried by a Magistrate.

4. In A.I.R. S.C. 1732 the Hon'ble Supreme Court has held as follows :" 12. Public Prosecutor is appointed, as indicated in Section 24 of the Code, for conducting any prosecution, appeal or other proceedings in the Court. He has also the power to withdraw any case from the prosecution with the consent of the Court. He is the officer of the Court. Thus Public Prosecutor is to deal with a different field in the administration of justice and he is not involved in investigation. It is not in the scheme of the Code for supporting or sponsoring any combined operation between the Investigating Officer and the Public Prosecutor for filing the report in the Court. 13. In this context a reference can be made to the following observation made by the Judicial Committee of the Privy Council in Emperor v. Khwaja Nazir Ahmad, AIR 1945 PC 18 : [1945 (46) Cri LJ 413] : " In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court." 14. Following the above, a two-Judge Bench of this Court has stated in Abhinandan Jha v. Dinesh Misra, AIR 1968 SC 117 : [1968 Crl LJ 97] as follows : " We have already pointed out that the investigation, under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, as pointed out earlier, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority." 15. In this context we may also point out that the Investigating Officer, though is subject to supervision by his superiors in

rank is, not to take instructions regarding investigation of any particular case even from the executive government of which he is a subordinate officer. This position which was well delineated by the celebrated Lord Denning, has since been followed by this Court. In R. v. Metropolitan Police Commissioner, [1968 I ALL E.R. 763], Lord Denning has said thus : " I have no hesitation, however, in holding that, like every constable in the land, he should, and is, independent of the executive. He is not subject to the orders of the Secretary of State.... I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone." 16. In Vineet Narain v. Union of India, [1998 1 SCC 226 : 1998 AIR SCW 645 : AIR 1998 S.C. 889 : 1998 Crl LJ 1208] a three Judge Bench of this Court after quoting the above passage has stated: "There can hardly be any doubt that obligation of the police in our constitutional scheme is not less". 17. In State v. Raj Kumar Jain [1998 (6) S.C.C. 551 : 1998 A.I.R. S.C.W. 2837 : A.I.R. 1998 S.C. 2985 : 1998 Cri LJ 4051] a two-Judge Bench considered the legality of an order passed by a Special Judge before whom the CBI filed final report in respect of a Junior Engineer who was pitted against offences under the Prevention of Corruption Act. The CBI in the report held that the allegations made against him were unsubstantiated. But the Special Judge declined to accept the said report as in his opinion the CBI should have taken the view of the Sanctioning Authority. So the Special Judge directed the CBI to conduct further investigation after approaching the Sanctioning Authority. Though the High Court of Delhi did not interfere with the said direction, this Court interfered with it for which their Lordships followed the decision in Abhinandan Jha [AIR 1968 S.C. 117 : 1968 Cri LJ 9 7] (supra). The Bench then observed thus : " Viewed in this context, the CBI was under no obligation to place the materials collected during investigation before the sanctioning authority, when they found that no case was made out against the respondent. To put it differently, if the CBI had found on investigation that a prima facie case was made out against the respondent to place him on trial and accordingly prepared a charge-sheet (Challan) against him, then only the question of obtaining sanction of the authority under Section 6 (1) of the Act would have arisen for without that the Court would not be competent to take cognizance of the charge-sheet. It must, therefore, be said that both the Special Judge and the High Court were patently wrong in observing that the CBI was required to obtain sanction from the prosecuting authority before approaching the Court for accepting the report under Section 173 (2), Cr.P.C. for discharge of the respondent." 18. It is worthy of notice that even when law required that prosecution could be commenced only with the sanction of the authority concerned this Court took the stand that such Sanctioning Authority is not a consultee of the Investigating Officer to form his opinion regarding the final shape of investigation. The position of the present case

is even much lighter and hence the Investigating Officer cannot be directed to be influenced by the opinion of the Public Prosecutor. 19. The High Court has committed an illegality in directing the final report to be taken back and to file a fresh report incorporating the opinion of the Public Prosecutor. Such an order cannot stand legal scrutiny and hence we allow these appeals and set aside the impugned order."

4. The judgment cited above is clear that a police officer who investigates the crime is to form his opinion about the offence committed by the accused and he cannot simply get the opinion of the Public Prosecutor and file a different report against his own opinion. The Public Prosecutor is expected to go through the entire case file and find out the correct section of I.P.C. applicable to the particular case and he cannot write one line opinion in a hazardous manner as in this case. 5. When a young girl aged about 14 years has committed suicide by self immolation due to the atrocious behaviour of the accused who were continuously humiliating her in an abusive language touching upon her character, that harassment and humiliation culminated in the suicide of the victim girl. Under such circumstances, the deletion of Section 306 of I.P.C. in the final report filed is totally wrong. Therefore, the respondent police is directed to file additional charge sheet for alleged offence under Section 306 of I.P.C. before the same Magistrate. It is alleged by the counsel for the petitioner that originally when the case was registered under Section 306 of I.P.C. all the witnesses' statements contained the facts which will establish an offence under Section 306 of I.P.C. Now, it is alleged that, the respondent police have altered the original statement of the witnesses to suit alteration of the Sections of lesser punishment as under Sections 354 and 509 of I.P.C. The respondent police are directed to file the original statement of all the witnesses which will make out a case for an offence under Section 306 of I.P.C. before the Court and then file additional charge sheet for alleged offence under Section 306 of I.P.C. This petition is ordered accordingly. Consequently, connected miscellaneous petition is closed.

Index : Yes
Website : Yes
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To
The Inspector of Police,
V-2, Virugambakkam Police Station,
Virugambakkam, Chennai 600 092.